



PRELIMINARY DRAFT

No. 3160

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-1-17-9; IC 30-4-3-3.

Synopsis: Probate and trust administration. Provides that payments on liens paid with respect to a probate distribution are charged to the beneficiaries of the distribution unless the will provides expressly or by necessary implication that the payment be charged against the residue of the estate. Provides that a general directive in a will to pay debts does not imply an intent that a devise of property subject to a lien be distributed free from the lien. Provides that if trust property subject to a lien is specifically distributable, the distributee shall take the property subject to the lien unless the terms of the trust provide expressly or by necessary implication that the lien be otherwise paid. Provides that payments on liens paid with respect to a trust distribution are charged to the beneficiaries of the distribution unless the trust provides expressly or by necessary implication that the payment be charged against the residue of the trust estate. Provides that a general directive in a trust to pay debts does not imply an intent that a distribution of property subject to a lien be distributed free from the lien.

Effective: July 1, 2014.



A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-1-17-9 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. **(a) As used in this**
3 **section, "lien" refers to a mortgage, pledge, security interest, or**
4 **other lien.**

5 **(b) When any real or personal property subject to a mortgage,**
6 ~~pledge, or other lien~~ is specifically devised, the devisee shall take ~~such~~
7 ~~property so the devised property~~ subject to ~~such mortgage the lien~~
8 unless the will provides expressly or by necessary implication that ~~such~~
9 ~~mortgage the lien~~ be otherwise paid. If a ~~mortgagee the holder of a~~
10 **lien** receives payment on a claim based upon the obligation secured by
11 ~~such mortgage, the lien~~, the devise which was subject to ~~such mortgage~~
12 **the lien** shall be charged with the reimbursement to the estate of the
13 amount of ~~such the~~ payment for the benefit of the distributees entitled
14 ~~thereto. to the devise, unless the will provides expressly or by~~
15 **necessary implication that the payment be charged against the**
16 **residue of the estate.**

17 **(c) For purposes of this section, a general directive in a will to**
18 **pay debts does not imply an intent that a devise of property subject**
19 **to a lien be distributed free from the lien.**

20 SECTION 2. IC 30-4-3-3, AS AMENDED BY P.L.238-2005,
21 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2014]: Sec. 3. (a) Except as provided in the terms of the trust
23 and subject to subsection (c), a trustee has the power to perform
24 without court authorization, except as provided in sections 4(b) and
25 5(a) of this chapter, every act necessary or appropriate for the purposes
26 of the trust including, by way of illustration and not of limitation, the
27 following powers:

28 (1) The power to:

29 (A) deal with the trust estate;

30 (B) buy, sell, or exchange and convey or transfer all property
31 (real, personal, or mixed) for cash or on credit and at public or



- 1 private sale with or without notice; and
- 2 (C) invest and reinvest the trust estate.
- 3 (2) The power to receive additions to the assets of the trust.
- 4 (3) The power to acquire an undivided interest in a trust asset in
- 5 which the trustee, in any trust capacity, holds an undivided
- 6 interest.
- 7 (4) The power to manage real property in every way, including:
- 8 (A) the adjusting of boundaries;
- 9 (B) erecting, altering, or demolishing buildings;
- 10 (C) dedicating of streets, alleys, or other public uses;
- 11 (D) subdividing;
- 12 (E) developing;
- 13 (F) obtaining vacation of plats;
- 14 (G) granting of easements and rights-of-way;
- 15 (H) partitioning;
- 16 (I) entering into party wall agreements; and
- 17 (J) obtaining title insurance for trust property.
- 18 (5) The power to:
- 19 (A) grant options concerning disposition of trust property,
- 20 including the sale of covered security options; and
- 21 (B) take options for acquisition of trust property, including the
- 22 purchase back of previously sold covered security options.
- 23 (6) The power to enter into a lease as lessor or lessee, with or
- 24 without option to renew.
- 25 (7) The power to enter into arrangements for exploration and
- 26 removal of minerals or other natural resources and enter into a
- 27 pooling or unitization agreement.
- 28 (8) The power to continue the operation or management of any
- 29 business or other enterprise placed in trust.
- 30 (9) The power to:
- 31 (A) borrow money, to be repaid from trust property or
- 32 otherwise; and
- 33 (B) encumber, mortgage, pledge, or grant a security interest in
- 34 trust property in connection with the exercise of any power.
- 35 (10) The power to:
- 36 (A) advance money for the benefit of the trust estate and for all
- 37 expenses or losses sustained in the administration of the trust;
- 38 and
- 39 (B) collect any money advanced, without interest or with
- 40 interest, at no more than the lowest rate prevailing when
- 41 advanced.
- 42 (11) The power to prosecute or defend actions, claims, or
- 43 proceedings for the protection of:
- 44 (A) trust property; and
- 45 (B) the trustee in the performance of the trustee's duties.
- 46 (12) The power to:



- 1 (A) pay or contest any claim;
- 2 (B) settle a claim by or against the trust by compromise or
- 3 arbitration; and
- 4 (C) abandon or release, totally or partially, any claim
- 5 belonging to the trust.
- 6 (13) The power to insure the:
 - 7 (A) trust estate against damage or loss; and
 - 8 (B) trustee against liability with respect to third persons.
- 9 (14) The power to pay taxes, assessments, and other expenses
- 10 incurred in the:
 - 11 (A) acquisition, retention, and maintenance of the trust
 - 12 property; and
 - 13 (B) administration of the trust.
- 14 (15) The power to:
 - 15 (A) vote securities, in person or by a general or special proxy;
 - 16 (B) hold the securities in the name of a nominee if the trustee
 - 17 is a corporate trustee; and
 - 18 (C) effect or approve, and deposit securities in connection
 - 19 with, any change in the form of the corporation, including:
 - 20 (i) dissolution;
 - 21 (ii) liquidation;
 - 22 (iii) reorganization;
 - 23 (iv) acquisition; and
 - 24 (v) merger.
- 25 (16) The power to employ persons, including:
 - 26 (A) attorneys;
 - 27 (B) accountants;
 - 28 (C) investment advisors; and
 - 29 (D) agents;
- 30 to advise and assist the trustee in the performance of the trustee's
- 31 duties.
- 32 (17) The power to effect distribution of property in cash, in kind,
- 33 or partly in cash and partly in kind, in divided or undivided
- 34 interests.
- 35 (18) The power to execute and deliver all instruments necessary
- 36 or appropriate to accomplishing or facilitating the exercise of the
- 37 trustee's powers.
- 38 (19) With respect to an interest in a proprietorship, partnership,
- 39 limited liability company, business trust, corporation, or another
- 40 form of business or enterprise, the power to:
 - 41 (A) continue the business or enterprise; and
 - 42 (B) take any action that may be taken by shareholders,
 - 43 members, or property owners, including:
 - 44 (i) merging;
 - 45 (ii) dissolving; or
 - 46 (iii) changing the form of business organization or



- 1 contributing additional capital.
- 2 (20) With respect to possible liability for violation of
- 3 environmental law, the power to:
- 4 (A) inspect or investigate property:
- 5 (i) the trustee holds or has been asked to hold; or
- 6 (ii) owned or operated by an organization in which the
- 7 trustee holds an interest or has been asked to hold an
- 8 interest;
- 9 to determine the application of environmental law with respect
- 10 to the property;
- 11 (B) take action to prevent, abate, or remedy an actual or
- 12 potential violation of an environmental law affecting property
- 13 held directly or indirectly by the trustee before or after the
- 14 assertion of a claim or the initiation of governmental
- 15 enforcement;
- 16 (C) decline to accept property into the trust or disclaim any
- 17 power with respect to property that is or may be burdened with
- 18 liability for violation of environmental law;
- 19 (D) compromise claims against the trust that may be asserted
- 20 for an alleged violation of environmental law; and
- 21 (E) pay the expense of any inspection, review, abatement, or
- 22 remedial action to comply with environmental law.
- 23 (21) The power to exercise elections with respect to federal, state,
- 24 and local taxes.
- 25 (22) The power to select a mode of payment under any employee
- 26 benefit plan or retirement plan, annuity, or life insurance payable
- 27 to the trustee and exercise rights under the plan, annuity, or
- 28 insurance, including the right to:
- 29 (A) indemnification:
- 30 (i) for expenses; and
- 31 (ii) against liabilities; and
- 32 (B) take appropriate action to collect the proceeds.
- 33 (23) The power to make loans out of trust property, including
- 34 loans to a beneficiary on terms and conditions the trustee
- 35 determines fair and reasonable under the circumstances. The
- 36 trustee has a lien on future distributions for repayment of the
- 37 loans.
- 38 (24) The power to pledge trust property to guarantee loans made
- 39 by others to the beneficiary on terms and conditions the trustee
- 40 considers to be fair and reasonable under the circumstances. The
- 41 trustee has a lien on future distributions for repayment of the
- 42 loans.
- 43 (25) The power to:
- 44 (A) appoint a trustee to act in another jurisdiction with respect
- 45 to trust property located in the other jurisdiction;
- 46 (B) confer on the appointed trustee all the appointing trustee's



- 1 powers and duties;
 2 (C) require the appointed trustee to furnish security; and
 3 (D) remove the appointed trustee.
- 4 (26) With regard to a beneficiary who is under a legal disability
 5 or whom the trustee reasonably believes is incapacitated, the
 6 power to pay an amount distributable to the beneficiary by:
 7 (A) paying the amount directly to the beneficiary;
 8 (B) applying the amount for the beneficiary's benefit;
 9 (C) paying the amount to the beneficiary's guardian;
 10 (D) paying the amount to the beneficiary's custodian under
 11 IC 30-2-8.5 to create a custodianship or custodial trust;
 12 (E) paying the amount to an adult relative or another person
 13 having legal or physical care or custody of the beneficiary to
 14 be expended on the beneficiary's behalf, if the trustee does not
 15 know of a guardian, custodian, or custodial trustee; or
 16 (F) managing the amount as a separate fund on the
 17 beneficiary's behalf, subject to the beneficiary's continuing
 18 right to withdraw the distribution.
- 19 (27) The power to:
 20 (A) combine at least two (2) trusts into one (1) trust; or
 21 (B) divide one (1) trust into at least two (2) trusts;
 22 after notice to the qualified beneficiaries, if the result does not
 23 impair the rights of any beneficiary or adversely affect
 24 achievement of the purposes of the trust.
- 25 (b) Any act under subsection (a)(4), an option under subsection
 26 (a)(5), a lease under subsection (a)(6), an arrangement under
 27 subsection (a)(7), and an encumbrance, mortgage, pledge, or security
 28 interest under subsection (a)(9) may be for a term either within or
 29 extending beyond the term of the trust.
- 30 (c) In acquiring, investing, reinvesting, exchanging, retaining,
 31 selling, and managing property for any trust, the trustee thereof shall
 32 exercise the judgment and care required by IC 30-4-3.5. Within the
 33 limitations of the foregoing standard, the trustee is authorized to
 34 acquire and retain every kind of property, real, personal, or mixed, and
 35 every kind of investment, including specifically, but without in any way
 36 limiting the generality of the foregoing, bonds, debentures, and other
 37 corporate obligations, stocks, preferred or common, and real estate
 38 mortgages, which persons of prudence, discretion, and intelligence
 39 acquire or retain for their own account, and within the limitations of the
 40 foregoing standard, the trustee is authorized to retain property properly
 41 acquired, without limitation as to time and without regard to its
 42 suitability for original purchase. Within the limitations of the foregoing
 43 standard, the trustee is authorized to sell covered security options and
 44 to purchase back previously sold covered security options.
- 45 (d) If a distribution of particular trust assets is to be made to two (2)
 46 or more beneficiaries entitled to receive fractional shares in those



assets, the trustee may distribute the particular assets without distributing to each beneficiary a pro rata share of each asset. However, the trustee shall:

(1) distribute to each beneficiary a pro rata share of the total fair market value of all of the particular assets as of the date of distribution; and

(2) cause the distribution to result in a fair and equitable division among the beneficiaries of capital gain or loss on the assets.

(e) If the trust is terminated or partially terminated, the trustee may send to the beneficiaries a proposal for distribution. If the proposal for distribution informs the beneficiary that the beneficiary:

(1) has a right to object to the proposed distribution; and

(2) must object not later than thirty (30) days after the proposal for distribution was sent;

the right of the beneficiary to object to the proposed distribution terminates if the beneficiary fails to notify the trustee of an objection within the time limit set forth in subdivision (2).

(f) When any real or personal property subject to a lien (as defined by IC 29-1-17-9(a)) is specifically distributable, the distributee shall take the property subject to the lien unless the terms of the trust provide expressly or by necessary implication that the lien be otherwise paid. If:

(1) an event occurs that makes the property distributable; and

(2) the holder of a lien on the property receives payment on a claim based upon the obligation secured by the lien;

the property subject to the lien shall be charged with the reimbursement to the trust of the amount of the payment for the benefit of the beneficiaries entitled to the distribution, unless the terms of the trust provide expressly or by necessary implication that the payment be charged against the residue of the trust estate.

(g) For purposes of subsection (f), a general directive or authority in the trust for payment of debts does not imply an intent that the distribution of property subject to a lien be made free from the lien.

